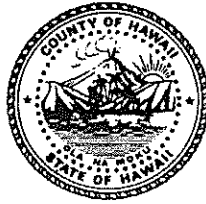


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

## County of Hawaii

### PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

March 16, 2009

Ms. Jan Buchanan  
Mr. Marc Vandenplas  
82-5778 Napo'opo'o Road  
Captain Cook, HI 96704

Dear Ms. Buchanan and Mr. Vandenplas:

**SUBJECT:** Additional Farm Dwelling Agreement Application (FDA-09-000240)  
Applicants: Jan Buchanan and Marc Vandenplas  
Owners: Jan Buchanan and Marc Vandenplas  
State Land Use: Agriculture  
County Zoning: Agricultural (A-1a)  
Land Area: 6.165 Acres  
TMK: (3) 8-2-008:002

Pursuant to authority conferred to the Planning Director by Chapter 25, Article 5, Division 7, Section 25-5-77 of the Zoning Code and Planning Department Rule 13, Farm Dwellings, we have reviewed your request for two additional farm dwellings on the subject property (the Property). Your submittals included the following information:

1. Name and address of the landowner(s) or lessee(s), if the latter has a lease on the Property with a term exceeding one year from the date of the farm dwelling agreement.
2. Written authorization of the landowner(s) if the lessee filed the request.
3. A farm plan or evidence of the applicant's continual agricultural productivity or farming operation within the County, including an explanation of why this additional farm dwelling is needed in connection with the agricultural productivity or farming operation. Your farm plan included the following ongoing and proposed income-producing agricultural activities:

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(a) Ongoing agricultural activities include the following:

- i. Approximately 3,500 existing palm trees and 140 existing landscaping trees (including monkeypod, royal Poinciana, and kou) in varying stages of maturation, in pots and in ground, being grown for wholesale and retail sale.
- ii. Approximately 500 "starter palms" imported each year, as well as on-site germination and seedling development, to maintain inventory supply.
- iii. Nurseries, out-plantings and work areas together comprise approximately 4.5 acres of the Property.

(b) Proposed agricultural activities include the following:

- i. Expand nursery/grow-out area for potted palms by an additional one-half acre on the Property.
- ii. Expand nursery/grow-out area for landscape trees and palms onto one acre of leased land on a separate, adjoining parcel of land owned by others.

(c) The present paid labor man-hours are approximately 45 hours per week to carry out the farm field work. Approximately 15 additional man-hours per week are expended by the owners in unpaid farm labor and farm management including bookkeeping, marketing, sales and purchasing, for a total of approximately 60 man-hours per week for the ongoing farm operation. The additional labor man-hours would be 3 hours per week of field work, excluding the work to be performed on the short-term lease of adjacent property, for a total of 63 hours per week to maintain, manage and operate the farm on the Property. A portion of the owner's unpaid farm labor and management duties will be assigned to one or more farm workers residing in the additional farm dwellings, resulting in a labor/farm dwelling allocation as follows:

1. Existing single-family dwelling ("Farm Dwelling No. 1"): 9 hours/week  
(Not including 3 hours/week for field labor on adjoining leased property)
2. First additional farm dwelling ("Farm Dwelling No. 2"): 27 hours/week
3. Second additional farm dwelling ("Farm Dwelling No. 3"): 27 hours/week

4. Evidence of existing engagement in agricultural productivity in the form of copies of sales and expense receipts and a State of Hawaii Department of Taxation's General Excise (GE) tax license has also been presented.

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5. Applicant's commitment to the farm plan will be shown in the form of the enclosed Additional Farm Dwelling Agreement affidavit, to be notarized and submitted for recordation with the Bureau of Conveyances, which states that the additional dwelling shall be used for farm-related purposes.

**Findings:**

1. In Chapter 205, Hawaii Revised Statutes (HRS), the State Land Use Law does not authorize residential dwellings as a permitted use in the State Land Use Agricultural district unless the dwelling is related to an agricultural activity or is a farm dwelling. A **farm dwelling** as defined in Section 205-4.5, Chapter 205, HRS, **means a single family dwelling located on and used in connection with a farm**, including clusters of single family farm dwellings permitted within agricultural parks developed by the State, **or where agricultural activity provides income to the family occupying the dwelling.** (emphasis added)
2. The Property was created prior to June 4, 1976, which, pursuant to HRS §205-4.5(b), allows the first dwelling on the lot to be used as a single-family dwelling.
3. By letter dated December 16, 2003, the Planning Department approved an application by the same applicants for one additional farm dwelling (identified therein as a second farm dwelling) for the Property. An Additional Farm Dwelling Agreement, having a nominal execution date of December 8, 2003, was executed by the applicants and the County Planning Director on January 20, 2004 and recorded in the State of Hawaii Bureau of Conveyances on January 28, 2004 as Document No. 2004-018448. Said Agreement included the following incorporated condition, set forth in Exhibit "A" thereto:

"[Condition No.] 6. This Additional Farm Dwelling Agreement shall be valid for a period of two (2) years from the date of this approval letter to secure a building permit for the additional farm dwelling. Failure to secure a building permit for this additional farm dwelling on or before December 8, 2005 may cause the Director to initiate proceedings to invalidate the AFDA. The building permit for the first dwelling on the property shall be secured prior to or in conjunction with the AFD permit."

4. Building Permit No. B2004-0680K was issued on April 28, 2004 for the existing single family dwelling. No building permit for the prior approved additional farm dwelling has been issued as of today's date. No action has yet been taken by the Planning Director to invalidate the prior, above-referenced AFDA.

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5. The Farm Plan, General Excise Tax License, and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there is/will be income producing agricultural activity and the income is/will be taxed.
6. In addition, the following agencies have submitted their comments as stated below:

(a) Department of Water Supply (Letter dated March 16, 2009):

“Please be informed that the subject parcel is currently served by two 5/8-inch meters. Each meter is adequate for only one dwelling at an average daily usage of 400 gallons.

Our records indicate that the applicant had previously applied for a subdivision action for the subject property. The applicant was notified that the existing water usage exceeded the allowable amount for their existing service. They were given time to show the Department that stringent water conservation practices would be followed to reduce their existing water usage to one unit of water at an average daily usage of 400 gallons per day by August 31, 2007. At the end of 2007, the water usage did decrease but not by what was required. /

Currently the past 12-month water usage is at an average of two (2) units. Therefore, the applicant is required to reduce their existing water usage to one unit of water at an average daily usage of 400 gallons per day at their existing service (Account No. 920-20550) within a 6 month period. Or the applicant will be required install an additional 5/8-inch meter, fronting the subject parcel on Kanele Street.

Inasmuch as this application is proposing an additional third dwelling, the installation of a separate 5/8-inch meter will be required. Installation of the service lateral for the 3<sup>rd</sup> service is the responsibility of the applicant. Water can be made available from the Department’s existing 6-inch waterline within Kanele Street, fronting the subject parcel.

Therefore, the Department has no objections to the proposed application, subject to the applicant understanding and accepting the following conditions:

1. Construct necessary water system improvements, which shall include, but not be limited to:
  - a. Installation of a third 1-inch service lateral to service a 5/8-inch meter, which shall be restricted to an average daily-flow of 400 gallons,

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- b. subject to other agencies' requirements to construct improvements within the road right-of-way fronting the property affected by the proposed development, the applicant shall be responsible for the relocation and adjustment of the Department's affected water system facilities, should they be necessary.

Submit construction plans and design calculations prepared by a professional engineer, registered in the State of Hawai'i, for review and approval.

2. Remittance of \$5,500.00, which is subject to change, to our Customer Service Section.
3. Installation of a backflow prevention assembly (reduced pressure type) by a licensed contractor on the applicant's property just after the meter. If the existing meter does not have an approved backflow prevention assembly, the installation of one will also be required as there is existing agricultural activity on the property. The installation of the backflow prevention assembly must be inspected and approved by the Department before water service can be granted. A copy of our backflow prevention handout is being forwarded to the applicant to help them understand this requirement.

Should there be any questions, please contact Mr. Ryan Quitoriano of our Water Resources and Planning Branch at 961-8070, extension 256."

(b) Real Property Tax Office:

No comments were received.

(c) Department of Health (Memorandum dated February 17, 2009):

"We recommend that you review all of the Standard Comments on our website: [www.state.hi.us/health/environmental/env-planning/landuse/landuse.html](http://www.state.hi.us/health/environmental/env-planning/landuse/landuse.html). Any comments specifically applicable to this project should be adhered to."

**Decision:**

In view of the above, your request to construct a **second and third** farm dwelling on the Property is approved subject to the following conditions:

1. The prior Additional Farm Dwelling Agreement referenced above shall be terminated by a recorded cancellation agreement executed by applicants and the County by its Planning Director. This cancellation agreement shall be executed and recorded at the State of Hawaii Bureau of Conveyances prior to or concurrently with execution and recordation of the Additional Farm Dwelling Agreement contemplated herein.

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2. The additional farm dwellings shall only be used to provide shelter for persons involved in the agricultural or farm-related activity on the Property. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the farm dwellings.
3. The agreement shall run with the land and apply to all persons who may, now or in the future, use or occupy the additional farm dwellings. Both the enclosed Cancellation of Additional Farm Dwelling Agreement, pertaining to the existing agreement referenced above, and the enclosed Additional Farm Dwelling Agreement ("AFDA") must be returned to the Planning Department with the appropriate notarized signatures of all persons comprising the "First Party" to the agreement along with a check made out to the Bureau of Conveyances in the amount of \$50.00 (recordation fees for both documents) in accordance with the enclosed Additional Farm Dwelling Agreement Instructions.
4. The Planning Department will not approve a building permit application for the additional dwellings until both the Cancellation of Additional Farm Dwelling Agreement and the AFDA document with all required attachments have been recorded at the Bureau of Conveyances.
5. The First Party or current owner/lessee shall submit proof of remittance of the Department of Water Supply Service Lateral Installation Charge with the submittal of a building permit application.
6. The First Party shall comply with all other applicable rules, regulations, and requirements of the Planning Department (including but not limited to the Zoning Code, Chapter 25, Department of Public Works, Department of Water Supply, Fire Department and State Department of Health and other reviewing agencies/divisions listed on the Building Permit Application.
7. Your Additional Farm Dwelling Agreement has been approved based on your existing agricultural activity as presented in your farm plan and summarized previously in this letter. It is required that the First Party (owners and lessees) to the Agreement shall continue to carry out and maintain this farm plan for the life of both of the additional farm dwellings. The Second Party (County of Hawaii Planning Department) of the Agreement may allow modifications for good cause shown by First Party.
8. The First Party shall allow the Second Party or its representative to inspect the farm from time to time, upon reasonable prior notice, to ascertain compliance with the representations and conditions of the farm plan and the AFDA.

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9. This Additional Farm Dwelling Agreement shall be valid for a period of two (2) years from the date of this approval letter to secure a building permit for the additional farm dwelling. Failure to secure a building permit for this additional farm dwelling on or before March 16, 2011 may cause the Director to initiate proceedings to invalidate the AFDA.

Should you have questions or require further information, please feel free to contact Keola Childs of our West Hawaii office at 327-3510.

Sincerely,



B. J. Leithead Todd  
Planning Director

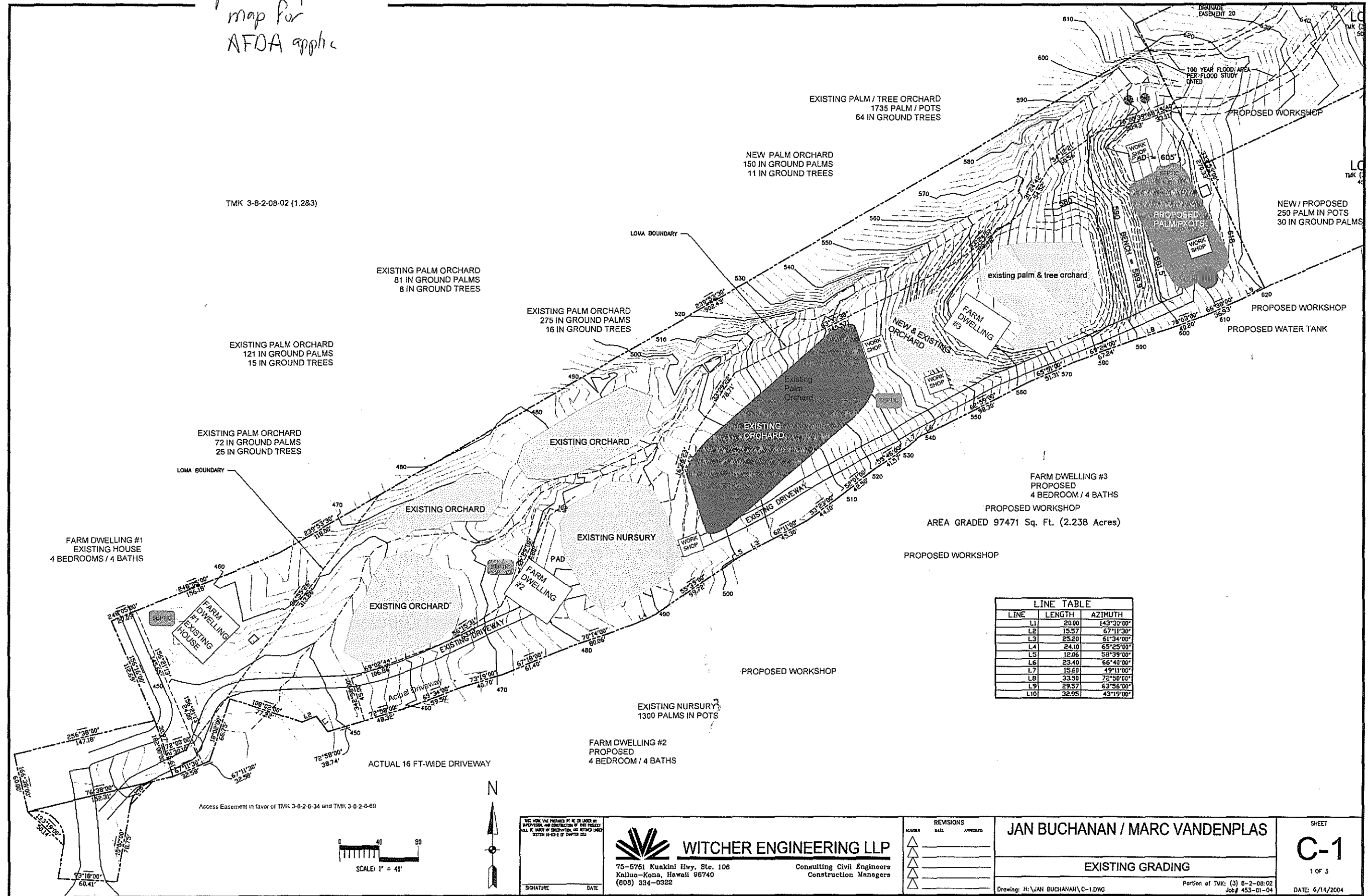
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K:\Staff\Childs\AFDA\AFDA Corr\Approval\AFDAapr-82008002 Buchanan-Vanderplas.doc

Enclosure: AFDA document  
AFDA document instruction sheet

xc: Mr. Milton Pavao, DWS  
Mr. Mike McCall, RPT  
Planning Department – West Hawaii Office

updated replacement map for AFDA applic



TMK 3-8-2-08-02 (1.2&3)

EXISTING PALM ORCHARD  
81 IN GROUND PALMS  
8 IN GROUND TREES

EXISTING PALM ORCHARD  
275 IN GROUND PALMS  
16 IN GROUND TREES

EXISTING PALM ORCHARD  
121 IN GROUND PALMS  
15 IN GROUND TREES

EXISTING PALM ORCHARD  
72 IN GROUND PALMS  
26 IN GROUND TREES

FARM DWELLING #1  
EXISTING HOUSE  
4 BEDROOMS / 4 BATHS

EXISTING ORCHARD

EXISTING NURSURY

FARM DWELLING #2

FARM DWELLING #2  
PROPOSED  
4 BEDROOM / 4 BATHS

EXISTING NURSURY  
1300 PALMS IN POTS

EXISTING PALM / TREE ORCHARD  
1735 PALM / POTS  
64 IN GROUND TREES

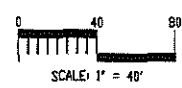
NEW PALM ORCHARD  
150 IN GROUND PALMS  
11 IN GROUND TREES

FARM DWELLING #3  
PROPOSED  
4 BEDROOM / 4 BATHS  
PROPOSED WORKSHOP  
AREA GRADED 97471 Sq. Ft. (2.238 Acres)

NEW / PROPOSED  
250 PALM IN POTS  
30 IN GROUND PALMS

LINE TABLE		
LINE	LENGTH	AZIMUTH
L1	20.00	143°30'00"
L2	15.57	67°11'30"
L3	25.20	61°34'00"
L4	24.10	65°25'00"
L5	12.06	58°39'00"
L6	23.40	66°40'00"
L7	15.50	49°11'00"
L8	33.30	72°50'00"
L9	29.57	63°56'00"
L10	32.95	43°19'00"

Access Easement in favor of TMK 3-8-2-8-34 and TMK 3-8-2-8-60



SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

**WITCHER ENGINEERING LLP**  
 75-5751 Kuakini Hwy, Ste. 106  
 Kailua-Kona, Hawaii 96740  
 (808) 334-0322  
 Consulting Civil Engineers  
 Construction Managers

REVISIONS		
NUMBER	DATE	APPROVED
▲		
▲		
▲		

JAN BUCHANAN / MARC VANDENPLAS

EXISTING GRADING

Drawing: H:\JAN BUCHANAN\C-1.DWG

Portion of TMK: (3) 8-2-08-02  
 Job# 453-01-04

SHEET  
**C-1**  
 1 OF 3  
 DATE: 6/14/2004